

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

The United Illuminating Company)

Docket No. ER07-653-001

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER
OF THE MAINE PUBLIC UTILITIES COMMISSION
TO THE UNITED ILLUMINATING COMPANY'S
MOTION FOR LEAVE TO FILE ANSWER AND ANSWER**

The Maine Public Utilities Commission ("MPUC"), pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission ("Commission" or "FERC") Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213, hereby respectfully tenders for filing this Motion for Leave to Answer and Answer to the July 9, 2007 Motion for Leave to Answer and Answer ("July 9 Answer") filed by the United Illuminating Company ("UI") in response, in part, to the MPUC's June 22, 2007 Request for Rehearing and Clarification of the Commission's "Order Accepting in Part and Rejecting in Part, Revised Tariff Sheet and Section 205 Filing, Subject to Conditions"¹ issued in the above-captioned proceeding on May 22, 2007.

I. LEAVE TO FILE ANSWER TO UI's ANSWER

Pursuant to Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2) (2006), the MPUC requests that the Commission accept the MPUC's Answer herein. The MPUC's Motion for Leave should be granted and its Answer should be considered since the MPUC's Answer aids

¹ *The United Illuminating Company*, 119 FERC ¶ 61,182 (2007) ("May 22 Order"). As noted by UI in its July 9 Answer at footnote 2, the MPUC filed its Request for Rehearing and Clarification on June 22, 2007, due to an administrative error.

the Commission in its understanding of the issues presented and the positions taken, and ensures the development of a complete record.²

The Commission will allow otherwise unauthorized answers where, as here, an answer provides further explanation or otherwise helps to ensure the existence of a full and complete record and Commission understanding of that record. Although a reply to an answer is not provided for under Rule 213 of the Commission's Rules of Practice and Procedure, the Commission allows such reply where the information provided will facilitate the Commission's decisional process, or aid in the Commission understanding of the issues in the dispute.³ Similarly, the Commission will consider an otherwise impermissible reply when it enhances or facilitates a full and complete record upon

² See, e.g., *See Arizona Pub. Serv. Co., et al.* 106 FERC ¶ 61,021 at P 9 (2004); *Pacific Gas & Electric Co.*, 93 FERC ¶ 61,322 at 62,103 (2000); *American Transmission Company LLC*, 93 FERC ¶ 61,267 at 61,857 (2000); *Delmarva Power & Light Co.*, 93 FERC ¶ 61,098 at 61,259 (2000); *Commonwealth Edison Co.*, 93 FERC ¶ 61,040 at 61,085 (2000); *Sierra Pacific Power Co. & Nevada Power Co.*, 93 FERC ¶ 61,107 at 61,302 (2000); *California Power Exchange Corp.*, 92 FERC ¶ 61,093 at 61,372 (2000); *Tennessee Gas Pipeline Co.*, 55 FERC ¶ 61,437 at 62,306 n.7 (1991).

³ See *Egan Hub Partners, L.P.*, 73 FERC ¶ 61,334 at 61,929 (1995) ("Although our rules do not permit answers to answers, we may for good cause, waive this provision. We find good cause to do so in this instance in order to clarify the issues in dispute."); *New York Independent System Operator, Inc., et al.*, 91 FERC ¶ 61,218 at 61,797 (2000) (allowing otherwise impermissible answer deemed "useful in addressing the issues."); *Central Hudson Gas & Elect. Corp. et al.*, 88 FERC ¶ 61,138 at 61,381 (1999) (accepting impermissible answers because they helped to clarify the issues); *Pacific Gas and Elec. Co., et al.* 77 FERC ¶ 61,204 at 61,808 (1996) (allowing impermissible answers that assists in the understanding of the issues raised); *Buckeye Pipe Line Co.*, 45 FERC ¶ 61,046 at 61,160 (1988) (Good cause exists for consideration of prohibited answers where "they help explicate issues that are important to this proceeding . . ."). See also *Transwestern Pipeline Co.*, 50 FERC ¶ 61,211 at 61,672 n.5 (1990) ("Although answers to protests generally are not allowed by Rule 213 . . . we may waive this prohibition when circumstances warrant, e.g. where consideration of matters sought to be addressed in the answer will facilitate the decisional process or aid in the explication of issues.").

which the Commission can base its decision.⁴ The Commission also permits such answers where the information provided in the answer assists in the understanding of the parties' positions.⁵

The MPUC's Answer assists in the understanding of the parties' positions, especially the claims made by UI in its July 9 Answer which responds, in part, to the MPUC's Request for Rehearing and Clarification. Accordingly, the MPUC's Motion for Leave to Answer should be granted and their Answer considered by the Commission when it addresses requests for rehearing of the Commission's May 22 Order in this proceeding.

II. ANSWER

In its Request for Rehearing and Clarification, the MPUC requested that the Commission clarify that in accepting UI's proposed 50 basis point ROE adder for the "advanced technology" portion of the Project, consisting of the underground XLPE cable technology and its supporting facilities, the Commission is not pre-judging whether the

⁴ See *The New Power Co. v. PJM Interconnection Inc.*, 98 FERC ¶ 61,208 at 61,756 (2002) (allowing otherwise impermissible answers "on the basis that they provide new factual and legal material that helps the Commission in its decision-making process."); *Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.*, 93 FERC ¶ 61,017 at 61,036 (2000) (Noting that Rule 213 "prohibits the filing of an answer to an answer unless otherwise permitted by decision authority" but accepting such an answer that was deemed "helpful in the development of the record."); *Midwest Gas Transmission Co.*, 73 FERC ¶ 61,320 at 61,886 (1995) (finding good cause to allow otherwise impermissible answer "in order to develop a complete record on which to base a decision."); *Williams Natural Gas Co.*, 70 FERC ¶ 61,304 at 61,914 (1995) (allowing otherwise impermissible answer "to achieve a complete and accurate record.").

⁵ See *Kansas City Power & Light Co.*, 53 FERC ¶ 61,097 at 61,282 (1990) ("Here, the information set forth in the answers has assisted us in understanding the parties' positions. Accordingly, on this basis and given the absence of any undue prejudice and delay, we will accept all the answers.").

proposed underground XLPE cable technology facilities are more reliable or efficient than traditional overhead facilities. The MPUC submitted that UI's March 23 filing did not purport to produce such evidence, and, therefore, there would be no basis upon which the Commission could make such a determination.

The reason that the MPUC sought this clarification is that ISO New England, Inc.'s ("ISO-NE") Open Access Transmission Tariff ("OATT"), Schedule 12C, requires ISO-NE to review evidence as to whether the proposal was the most reliable, efficient alternative in determining whether any of the costs associated with certain proposed Transmission Upgrades expended on or after January 1, 2004 are "Localized Costs" as opposed to Pool-Supported Pool Transmission Facilities ("PTF") Costs.⁶ Those procedures set forth in Schedule 12C have not yet been followed, and a determination with respect to whether any of the costs associated are "Localized Costs" has not yet been made with respect to UI's Project.

The MPUC further explained that ISO-NE Planning Procedure No. 4, entitled "Procedure for Pool-Supported PTF Cost Review," implements and supplements ISO-NE OATT Schedule 12C, and that Attachment A to ISO-NE Planning Procedure No. 4, entitled "Supplemental Guidelines for Pool-Supported PTF Cost Review," sets forth a non-exclusive list of factors that the ISO-NE will consider as appropriate in determining whether there are Localized Costs, and a non-exclusive list of examples of the types of Projects that would be considered to contain Localized Costs. In that list of illustrative

⁶ The Transmission Upgrades subject to Schedule 12C are Regional Benefit Upgrades ("RBUs") and Regional Transmission Expansion Plan ("RTEP02") Upgrades on or after January 1, 2004.

examples of the types of Projects that would be considered to contain Localized Costs, the third illustrative example states:

The Project includes underground transmission cable, which is selected (a) at the direction of a local or state siting board, or (b) to address other local concerns, and the cost of overhead transmission lines is less expensive, taking into account all relevant costs.⁷

The MPUC explained that this example is right on point, since UI's Project includes underground transmission cable selected at the direction of the Connecticut Siting Council. Thus, pursuant to ISO-NE's Planning Procedure 4, UI's Project is the type of project that might be considered to contain "Localized Costs." The MPUC explained that ISO-NE has not yet gone through the process set forth in its Schedule 12C to determine what portion of the costs of UI's Project are "Localized Costs," and the MPUC wants to ensure that the ISO-NE's process can go forward without having been pre-judged by the Commission in its decision in the instant proceeding.

For those reasons, the MPUC requested that the Commission clarify that with respect to its decision to accept UI's proposed 50 basis point ROE adder for the advanced technology portion of the Project, which consists of the underground XLPE cable technology and the supporting 345-kV shunt reactors and substation automation package, subject to the outcome of the proceeding in Opinion No. 489 with respect to the zone of reasonable returns, and only for those costs incurred prior to August 8, 2005, the date of EPAAct 2005,⁸ the Commission did not intend to pre-judge whether the proposed underground facilities are more reliable or efficient than traditional overhead facilities.

⁷ *Id.* at Attachment A.

⁸ *See id.* at PP 71, 73 and 77.

In its July 9 Answer, UI responded, *inter alia*, to the MPUC's Request for Rehearing and Clarification, stating that:

In addition, on June 22, 2007, the Maine Public Utilities Commission ("MPUC") late-filed a Request for Rehearing and Clarification. *The United Illuminating Co.*, Request for Rehearing and Clarification of Maine Pub. Util. Comm'n, filed Jun. 22, 2007, Docket No. ER07-653-000. MPUC did not seek permission for its late filing and, accordingly, the filing should be rejected. In any event, with respect to MPUC's request for clarification, United Illuminating's filing did not seek to have the Commission pre-judge any issues regarding application of Schedule 12C of the ISO New England Inc. ("ISO-NE") Open Access Transmission Tariff. Presumably, the Commission will address such issues if and when they are posed to it.⁹

The MPUC's rehearing request was, in fact, filed one day out of time, due to administrative error. That said, the MPUC requests that the Commission nevertheless address the MPUC's motion for clarification.¹⁰

UI, as noted above, "did not seek to have the Commission pre-judge any issues regarding application of Schedule 12C of the ISO New England Inc. ("ISO-NE") Open Access Transmission Tariff" and understands that "the Commission will address such issues if and when they are posed to it." The Commission should address these statements by UI, along with the argument presented by the MPUC in its Request for Rehearing and Clarification, in clarifying that with respect to its May 22 Order to accept UI's proposed 50 basis point ROE adder for the advanced technology portion of the Project, the Commission did not intend to pre-judge whether the proposed underground facilities are more reliable or efficient than traditional overhead facilities.

⁹ July 9 Answer at 1, fn 2.

¹⁰ The MPUC also requests that in considering its Motion for Clarification, the Commission also note the MPUC's support for the rehearing request of the Connecticut Department of Public Utility Control ("CT-DPUC").

III. CONCLUSION

The MPUC requests that if the Commission accepts United Illuminating's July 9, 2007 Answer, the Commission should also grant the MPUC's Motion for Leave to File Answer and Answer as it will assist the Commission in resolving issues pertaining to its May 22, 2007 Order in this proceeding.

Dated: July 19, 2007

Respectfully submitted,

/s/ Lisa S. Gast

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding either by U.S. Mail or electronic service, as appropriate. Dated at Washington, D.C., this 19th day of July, 2007.

/s/ Harry A. Dupre

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